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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 CODY LEAVITT,

11 Petitioner,

12 vs.

13 DWIGHT NEVEN, *et al.*,

14 Respondents.
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Case No. 2:12-cv-00838-APG-NJK

ORDER

17 This closed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C.
18 § 2254, by a Nevada state prisoner. On March 17, 2014, the Court dismissed the petition with
19 prejudice as procedurally barred and denied petitioner a certificate of appealability. (Dkt. No. 59).
20 Judgment was entered the same date. (Dkt. No. 60).

21 Petitioner has filed a motion for a certificate of appealability. (Dkt. No. 62). In order to
22 proceed with his appeal, petitioner must receive a certificate of appealability. 28 U.S.C. §
23 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir.
24 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a
25 petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a
26 certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84
27 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court's
28 assessment of the constitutional claims debatable or wrong.” *Id.* (*quoting Slack*, 529 U.S. at 484).

1 In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues
2 are debatable among jurists of reason; that a court could resolve the issues differently; or that the
3 questions are adequate to deserve encouragement to proceed further. *Id.* In this case, the Court
4 found petitioner's claims to be procedurally defaulted, and petitioner failed to show cause and
5 prejudice, or a fundamental miscarriage of justice, to excuse the procedural default. No reasonable
6 jurist would find this Court's dismissal of the petition debatable or wrong. The Court therefore
7 denies petitioner a certificate of appealability.

8 **IT IS THEREFORE ORDERED** that petitioner's motion for a certificate of appealability
9 (Dkt. No. 62) is **DENIED**.

10 Dated: May 29, 2014.

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14 UNITED STATES DISTRICT JUDGE
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